



POLICE DEPARTMENT CITY OF NEW YORK

October 14, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Lawrence Sloan
Tax Registry No. 951270
105th Precinct
Disciplinary Case No. 2015-14073

Charges and Specifications:

1. Said Police Officer Lawrence Sloan, on or about August 27, 2014, at approximately 1730 hours, while assigned to the 105th Precinct and on duty, inside of [REDACTED], Queens County, wrongfully used force, in that without police necessity, he struck Person A in the face.

P.G. 203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Cindy Horowitz, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, New York 10038

Hearing Dates:

February 17 and July 6, 2016

Decision:

Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 17 and July 6, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Barry Pritchett as a witness. Respondent called Police Officer Christopher Albanese and Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the uncontested facts of this case.

At approximately 1730 hours, on August 27, 2014, police officers from the 105th Precinct responded to [REDACTED], in Queens New York. This location is the site of a group home for adolescents with mental health issues, operated at that time by SCO Family Services. Police Officers Albanese and Martinez were first to arrive on the scene, followed by Respondent and Police Officer Dormer. Upon their arrival, the police met [REDACTED], who was being physically restrained on a couch by two staff members. At the staff's request, the police officers agreed to bring Person A to [REDACTED] for a psychological evaluation. Person A had been a resident of the home for approximately one year and had been previously diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), bi-polar disorder and oppositional-defiance disorder. As the staff members released Person A to the police so that they could handcuff him for transportation to the hospital, a struggle ensued, the circumstances of which are in dispute. The police officers eventually handcuffed Person A and brought him outside to an ambulance, which transported him to the hospital.

At issue in this case is whether Respondent unlawfully used force by striking Person A in the face without police necessity.

The following is a summary of the disputed facts in this case.

Barry Pritchett testified that he was a Direct Care Counselor at SCO Family Services. Pritchett holds a Bachelor's degree in Behavioral Science and has been employed at SCO for 17 years. Pritchett testified that at about 1730 hours, Person A became verbally abusive and physically aggressive, while throwing things at the computer. As Pritchett attempted to calm Person A down, he pushed Pritchett (T. 23, 51). Pritchett and another staff member, Person B, held Person A down on a couch in what he characterized as a "sitting wrap" (T. 17-18, 52). According to Pritchett, some staff member called the 911 operator but he had no knowledge of the substance of the call. Shortly thereafter, he observed three to four police officers arrive. He recognized Respondent from a previous encounter (T. 26, 54). Once police officers directed the staff members to let Person A go, he balled his fists up in front of his face and was moving from side to side while lying on his back on the couch (T. 27-30). As Pritchett stood 2-3 feet behind the police officers, they attempted to place Person A in handcuffs (T. 34). Pritchett then observed Respondent punch Person A in his face three to four times with a closed fist (T. 36). Pritchett, as well as his co-workers, implored the officers not to punch Person A (T. 37). Respondent punched Person A while he was on his back, on the couch, with two other police officers restraining him (T. 37-38).

Person C's November 18, 2014, recorded statement to CCRB was admitted into evidence as CCRB Exhibit 2A and the accompanying transcript as 2B. Person C described overhearing a verbal altercation between Person A and two staff members, "Person B" and "Barry," concerning his use of inappropriate language. Person A threatened to throw something at the staff

members and Person C witnessed him throw a ball (Person C Transcript ["Person C"] 7-8). Person B and Barry restrained Person A, then someone called the police. Person C and other staff members moved the other residents upstairs away from the altercation (Person C 6, 8). When the police officers arrived, Person A was sitting on the couch, being restrained by Person B and Barry (Person C 12). Person C recalled Person B and Barry releasing their grips on Person A, then the police officers replacing them, in an attempt to keep him restrained (Person C 9). Person C stated that Person A did not appear to be "wild." As she turned her back, however, she heard Person B yell, "Don't punch him like that." Person C turned around and observed Respondent's fist headed toward Person A's face for a punch. Person C stated that she saw Respondent punch Person A in the face twice (Person C 13). The police officers then put handcuffs on Person A and took him outside. According to Person C, Person A was calm before Respondent hit him (Person C 13). After being punched, Person A was screaming, "Ow, ow." Person C stated that Person A wore braces, so the punches to his mouth cut the inside of his lip (Person C 14).

Once outside, the police officers became "rude [and] belligerent, blaming the staff for not controlling Person A" (Person C 6). Person C stated that Respondent told Pritchett, "You shouldn't run up on a cop . . . I have a gun . . . anything could have happened . . . I feel threatened . . .," and "[i]t's not our fault that you all lose kids every day" (Person C 15, 16). Person C then went back inside the home to alert her supervisor, [REDACTED] to enlist her assistance in trying to calm the police down (Person C 6-7, 15). According to Person C, these statements were made in response to the staff questioning Respondent about the necessity of punching Person A (Person C 16-17).

identified Respondent by name and described him as a "tall white guy, very, very low haircut, close to bald . . . like greenish eyes . . . over six feet" ([REDACTED] 10). Person C

also described another officer who was shorter and Hispanic in appearance, with very thick hair and a thicker build, approximately 5'7"-5'8" tall (Person C 11). CCRB did not offer any medical records in support of the claim that Person A had been injured during the altercation.

Person A's November 18, 2014 recorded statement to CCRB was admitted into evidence as CCRB Exhibit I A and the accompanying transcript as I B. In his statement, he asserted that "I was arguing with a kid, and then the staff told me something, and then arguing again and ["the kid"] hit me in my face and then I attacked him . . . and that's when another staff [member] came in my face . . . This guy [was just] talking to me [and] I just had a blast out . . . that's when the cops came and . . . they just hit me in the head . . . They thought I was going to do something, and then they just hit me in the head" (Person A Transcript ["Person A"] 5). Person A saw two uniformed police officers, whose race he did not recall. He admitted to being aggressive, but did not recall exactly how he manifested that aggression (Person A 7, 9). Person A denied ever trying to strike the police and claimed he was punched once in the face (Person A 9). According to Person A, the police officers told him to calm down and then punched him (Person A 9-10). Person A was taken to [REDACTED] Hospital and advised that he had sustained a lump on his head (Person A 11). Person A denied ever attempting to head-butt the police officers (Person A 12).

Police Officer Christopher Albanese testified that he was on duty with Police Officer Martinez on August 27, 2014, covering sector Henry Ida (T. 93). At 1730 hours, he responded to 2 [REDACTED] a location with which he was familiar, on the basis of a radio bulletin of "39, fight in progress." Albanese entered the group home and saw a resident, whom he later learned was Person A, being pinned to couch by a staff member. Albanese discerned that the altercation was, in reality, not a fight but an emotionally disturbed person who needed to go to the hospital. He called dispatch and requested that the code be changed to "54, EDP at location." Albanese

denied calling for any backup. While he was attempting to restrain Person A, Respondent and Police Officer Dormer arrived. When staff members released Person A to the police, Albanese felt him tense up and flail his arms (T. 97). Albanese also detected Respondent standing behind him. Albanese testified that he and Martinez handcuffed Person A without any member of the service punching or kicking him to gain his compliance (T. 98). According to Albanese, Person A was strong, and it took Albanese and Martinez, and perhaps one other officer, two to three minutes to handcuff him (T. 107).

Respondent testified that he responded to [REDACTED] at about 1730 hours with Police Officer Dormer, who was not his regular partner. Respondent asserted that he visited the location at least twice a week and knew it to be a group home housing emotionally disturbed individuals (T. 113). Respondent recalled the bulletin from dispatch as "39, male fighting staff" (*Id.*). Although the call was not in his sector, he elected to respond to offer assistance (*Id.* 113-14). When Respondent arrived at the location, he observed that there was already one police car outside (T. 114). As he stepped out of his car, he heard screaming and yelling coming from inside (*Id.*). Respondent went inside and saw two officers, who he later realized were Albanese and Martinez, trying to handcuff an individual who was on the couch, laying face-down (*Id.* 118, 129). According to Respondent, Person A was screaming, without being verbal, "almost as if . . . having a tantrum" (T. 133). The staff was around the officers (*Id.*). Respondent approached Albanese from behind and grabbed Person A's right arm, assisting in pulling it behind his back so that he could be handcuffed (T. 115). Person A was kicking, squirming and trying to get his hands under his stomach (T. 116, 130). Respondent testified that while he was attempting to handcuff Person A, staff members were interfering by "grabbing [the police officers], getting in the way . . . [and] riling up the patient" (*Id.*). Respondent testified further that he had to push past the staff

members to get to Person A (*Id.*). Respondent denied having to punch or kick Person A to get him handcuffed and did not observe other officers doing so (T. 119). Once Person A was handcuffed, he was brought outside to an ambulance (T. 120). Respondent did not observe any injuries to Person A at that time (*Id.*). He remained on the stoop for one minute until Albanese and Martinez accompanied Person A to the hospital, then resumed patrol duties. (*Id.*).

Respondent described

himself as 6'3" tall and weighing approximately 240 pounds at the time of the incident (T. 115). Respondent described Person A as 5'8"-5'9" tall, with a slender build (T. 120-21). According to Respondent, once taken outside, Person A was completely calm but he became agitated again when staff members came outside (T. 121-22).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than the task of attempting to reconstruct the most probable nature of a past event on the basis of conflicting testimonial accounts. While the law creates the framework within which such a task is accomplished, the ultimate determination of which account to accept in such cases depends almost solely on an assessment of witness credibility. That assessment remains the exclusive province of the fact finder.

In making such an assessment, the trier of fact should consider a wide range of factors, including but not limited to, witness demeanor, corroborating evidence, the consistency of a witness' account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and, perhaps most basically, the degree to which the witness' account is logical and comports with common sense and general human experience (*Dep't of Corrections v. Matthews*, OATH Index No. 228/14 [Nov. 18, 2013], citing *Dep't of Sanitation v. Menzies*, OATH Index No. 678/98 [Feb. 5, 1998], *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A [Sept. 9, 1998]).

Although these eyewitnesses differed in their description of the same event, their descriptions did not diverge to the point of being irreconcilable.

I find that Pritchett is a credible witness, in that his in-court testimony that Respondent punched Person A was clear, concise and logical. Pritchett's demeanor before the tribunal, the forthrightness of his answers and his candid assessment that Person A was aggressive during a significant portion of the encounter all weigh in favor of his veracity. Pritchett's ability to perceive the events he described in his testimony from a distance of 2-3 feet further enhance his credibility. I further find Pritchett's testimony credible because it was corroborated, in large part, by Person C's statement. Finally, Pritchett is merely an employee of SCO Family Services and is therefore an independent witness with little stake in the outcome.

This tribunal has previously noted that disciplinary charges relying on hearsay are difficult to prove unless the hearsay is detailed, persuasive and unencumbered with credibility problems (*Police Dep't v. Lowe*, OATH Index No. 892/91 [June 3, 1991], citing *Transit Auth. v. Maloney*, OATH Index No. 500/91 [Apr. 19, 1991], *aff'd sub nom., Maloney v. Suardy*, 202 A.D.2d 297, 609 N.Y.S.2d 179 [1st Dep't 1994]). Here, the two hearsay versions of the facts are sufficiently detailed and free of potential credibility issues that, when considered in the context of the entire record, I find them reliable.

I find Person C's statement credible because it bears significant indicia of reliability, namely: (1) the material portion of her statement [i.e., the alleged punches thrown by Respondent] is corroborated by Pritchett's live testimony; (2) her ability to recall Respondent's name out of all the police officers present suggests that her attention was focused on his actions that day; (3) within this context in a group home, witnessing a police officer punch a 16-year old in the face would be a memorable event for a reasonable person; (4) her candid concession that

Person A was behaving aggressively during portions of the encounter; (5) the reasonableness and candor of her concession that she did not witness what she believed to have been the first punch thrown by Respondent; and (6) the lack of a discernable reason to lie

In Person A's statement, he unequivocally asserts that he was punched by the police, but also admits that he was being aggressive before he was punched and that he fought with another resident prior to Respondent's arrival on the scene. Person A further admitted that he had to be held down by the police. These admissions qualify as statements against penal interest and lend reliability to his overall statement. In addition, his factual assertion that he was punched was corroborated by two other witnesses, one of whom testified in open court. Finally, his description of the relevant facts of this case appears to lack any embellishment.

I credit Albanese's testimony to the extent that he described his actions in taking Person A into custody for transportation to a hospital. I do not credit Albanese's assertion that no member of the service struck Person A as a means of obtaining his compliance. I find that his assertion was offered in an attempt to exculpate Respondent but is unsupportable given the state of the credible evidence in the record.

I find Respondent to be an unreliable witness based upon his interest in the outcome of this litigation, the substance of his testimony before the tribunal and the irreconcilable contradictions between his testimony and that of his own witness, Police Officer Albanese. I find that Respondent exaggerated the degree to which Person A resisted being handcuffed to paint a self-serving scenario in which he would be justified in using force against him. Furthermore, I find that Respondent's testimony regarding supposed interference by staff members was dubious.

The circumstances of Person A's restraint as described by Respondent are dramatically more volatile than that described by Albanese. Respondent claims that Person A was on the couch

face-down, squirming and trying to put his hands underneath his body to avoid being handcuffed. In contrast, Albanese testified that while Person A struggled, he was able, with one other officer, to get his hands behind his back and "rear cuff" him. At no point in his testimony did Albanese describe Person A's position as being face-down on the couch.

Respondent also testified that the staff members were interfering with the police officers, grabbing at them and getting in the way. Albanese, who would have had to have been one of the police officers allegedly being grabbed, made no mention of this in his testimony. It is noteworthy that the statements Respondent supposedly made after Person A had been brought outside the group home seem to dovetail with the argument advanced by his counsel at trial, as well as his own trial testimony; namely, that the staff members were at fault for Person A becoming unmanageable and that the allegations against him were an attempt to deflect attention from their own lack of professionalism. If, in fact, Respondent made those statements in response to criticism of the actions he took, they would only be probative of his state of mind at the time of the incident and do not directly address his belief of whether it was necessary to punch Person A. Paradoxically, Respondent denied ever striking Person A, an assertion corroborated by Albanese but contradicted by CCRB's three witnesses. Finally, the record does not contain any evidence that any of the staff members were cited for Obstructing Governmental Administration, which one would have expected had the circumstances been as Respondent described them.

Based upon the credible evidence in the record, I find that Respondent punched Person A several times in his face in an attempt to persuade him to cease his resistance. While the Patrol Guide permits officers to use reasonable force in order to effect an arrest, the record does not support a conclusion that the force used was necessary. I further find that under the

circumstances he was presented with, Respondent overreacted, misperceiving a threat to his own safety where none existed.

Based upon the foregoing, I find Respondent Guilty of the charged misconduct.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 6, 2011. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB has requested a penalty of fifteen vacation days. As the facts of this case warrant a significant sanction, I find that recommendation to be appropriate.

Respondents in previous cases involving the unauthorized use of force have suffered forfeitures between ten and fifteen days (*Disciplinary Case Nos. 2015-13315 & 2015-13316*, signed June 23, 2016 [Two four-year police officers, both with no prior formal disciplinary history, forfeited fifteen (15) vacation days each for improperly striking a handcuffed minor while he was face-first against a police van being searched. The Trial Commissioner determined that the evidence presented by the Department that each Respondent had improperly struck the handcuffed prisoner was factually irreconcilable with that presented by Respondents, namely their testimony that they did not strike the prisoner. A sergeant who responded to the scene testified that she observed both Respondents strike the handcuffed prisoner in the back. Respondents' assertion that that the sergeant deliberately lied about the incident because of her purported animosity toward Respondents was incredible.]; *Disciplinary Case No. 2015-14048*, signed June 23, 2016 [Ten-year police officer, with no prior disciplinary history, forfeited fifteen (15) vacation days for wrongfully striking a minor civilian's head between the swinging door and the frame of a steel gate, causing minor injuries to her head and neck. The complainant

attempted to enter a train station through the service gate. Respondent is shown on video striding ahead of her and pushing the door closed on the complainant. The video did not support Respondent's testimony that she tripped while trying to stop complainant from walking through the emergency exit and inadvertently pushed her into the gate. ADCT found that if Respondent was pursuing complainant for theft of service, an arrest could have been made without resorting to shutting the gate on the complainant's head.]; *Disciplinary Case No. 2015-14727*, signed June, 22, 2016 [Seven-year police officer, with no prior disciplinary record, negotiated a penalty of ten (10) vacation days for punching a handcuffed prisoner without police necessity. A sergeant who responded to the scene reported that he observed Respondent and another officer punching a handcuffed prisoner in the chest three to four times. The prisoner and his co-defendant both confirmed that he was punched by a police officer during interviews, though they alleged he was punched in the face by only one officer, and both identified Respondent from a photo array. Respondent denied engaging in any physical altercation. Though all officers at the scene agreed the prisoner was agitated, he was handcuffed and in the police van when Respondent struck him.]; *Disciplinary Case No. 2014-12821*, signed February 18, 2016 [Eighteen-year sergeant with no prior formal disciplinary record forfeited ten (10) vacation days for wrongfully punching an individual in the face and stepping on his head, causing bruises on the victim's lip, eye and cheek. The preponderance of the credible evidence presented at trial established that Respondent did in fact engage in the aforementioned misconduct. The victim's straightforward and unembellished account of Respondent's actions was supported by several photographs of his injuries.]).

In this case, Respondent repeatedly punched a 16-year-old with mental health issues, whom he outweighed by almost 100 pounds, while that individual was being restrained by two

other police officers. While it is likely that Respondent did not have personal knowledge of Person A's medical history, he was aware that he was responding to the location of a group home for youth with mental health issues. There is no evidence in the record which would support an inference that Respondent's actions were an attempt to protect himself or his brother officers. Similarly, there is no evidence in the record which would support a finding that Person A's resistance to being handcuffed was so protracted and violent that a resort to physical force to compel his acquiescence would have been warranted.

Accordingly, Respondent's decision to punch in his face was not the result of a deliberative process which adequately considered the necessity of such force in order to accomplish the task of handcuffing Person A in preparation for transportation to a psychiatric facility for evaluation. While it is true that police officers are authorized to use force to effect arrests and even restraint of emotionally disturbed individuals, this grant of authority is conditioned upon the discretion and judgment of the individual police officer.

This Department has consistently held that the primary duty of all members of the service is to preserve human life; accordingly, police officers must recognize that there is a difference between a recalcitrant criminal suspect who refuses to be taken into custody and an emotionally disturbed individual whose actions may be motivated, at least in part, by forces beyond his control. In this case, Respondent did not demonstrate the discrimination expected of a trained, experienced police officer in such situations. Based upon the foregoing, I recommend that Respondent forfeit 15 vacation days.

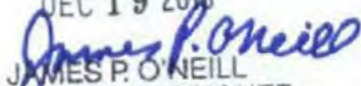
Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

DEC 19 2016


JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER LAWRENCE SLOAN
TAX REGISTRY NO. 951270
DISCIPLINARY CASE NO. 2015-14073

On his last three annual performance evaluations, Respondent twice received an overall rating of 4.0 "Highly Competent" in 2014 and 2015, and once, in 2013, received an overall rating of 4.5 "Extremely Competent/Highly Competent." [REDACTED]

He has no prior formal disciplinary history.

Paul M. Gamble
Assistant Deputy Commissioner Trials